

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DESHAWN CORTEZ JENKINS,

Defendant-Appellant.

UNPUBLISHED

June 13, 2013

No. 310004

Wayne Circuit Court

LC No. 11-008905-FC

Before: M. J. KELLY, P.J., and MURRAY and BOONSTRA, JJ.

PER CURIAM.

Defendant Deshawn Cortez Jenkins appeals by right his jury convictions of second-degree murder, MCL 750.317, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced Jenkins to serve 25 to 40 years in prison for his second-degree murder conviction and to serve two years in prison for his felony-firearm conviction. Because we conclude that there were no errors warranting relief, we affirm.

Jenkins first argues that there was insufficient evidence to establish that he was the person who shot and killed Terry L. Cooper. “In challenges to the sufficiency of the evidence, this Court reviews the record evidence de novo to determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt.” *People v Roper*, 286 Mich App 77, 83; 777 NW2d 483 (2009).

Here, Jenkins only challenges the sufficiency of the evidence establishing his identity. See *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008) (stating that identity is an element of every crime). At trial, Cooper’s brother, Terrance Cross, testified that he was with Jenkins and Cooper when the two began to argue. He said that he was walking in front of them when he heard his brother say, “I don’t give a fuck about the gun, I[’ll] smack you and take the gun.” At that point, he turned and saw Jenkins pull out a gun and shoot his brother. This testimony was sufficient to establish that Jenkins used a firearm to kill Cooper. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000) (stating that a witness’ positive identification is generally sufficient to establish identity).

Jenkins concedes that Cross identified him as the person who shot Cooper, but nevertheless contends that Cross’ testimony was not worthy of belief because of his criminal record and his inconsistent statements to police officers. There was evidence that Cross had a criminal record and gave police officers inconsistent statements. However, these factors go to

the weight and credibility of Cross' testimony, rather than the sufficiency of the evidence; and it is for the jury to determine whether and to what extent a witness should be believed. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992).

There was sufficient evidence to establish Jenkins' identity as the perpetrator of the charged crimes.

Jenkins also argues that the trial court's decision to sentence him to serve 25 to 40 years in prison violated the constitutional guarantee against cruel and unusual punishment. See US Const, Am VIII; Const 1963, art 1, § 16. Because Jenkins did not preserve this claim of error by raising it before the trial court, we shall review it for plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Here, as required by statute, the trial court sentenced Jenkins to serve a term that was within the range calculated under the sentencing guidelines. See *People v Babcock*, 469 Mich 247, 255-256; 666 NW2d 231 (2003). A sentence does not constitute cruel or unusual punishment if it is proportionate to "the circumstances surrounding the offense and the offender" *People v Drohan*, 264 Mich App 77, 92; 689 NW2d 750 (2004), *aff'd* 475 Mich 140 (2006).

Jenkins concedes that the 25 year minimum sentence imposed for his second-degree murder conviction is within the minimum sentence range of 180 to 300 months. Also, the trial court sentenced him to the mandatory two year sentence for felony-firearm. The sentencing guidelines "represent a comprehensive formula for determining what an appropriate sentence should be for that type of offender committing that type of offense." *People v Broden*, 428 Mich 343, 354; 408 NW2d 789 (1987). For that reason, when a trial court selects a sentence from within the range specified under the guidelines, the sentence is "presumptively not excessively severe or unfairly disparate." *Id.* at 354-355. And Jenkins has not presented any evidence to rebut this presumption. Therefore, we must affirm his sentence. *Babcock*, 469 Mich at 261.

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Kelly
/s/ Christopher M. Murray
/s/ Mark T. Boonstra